

Application No: 09/933,790  
Attorney's Docket No: GB 000139

### REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks. Claims 1, 5, 12, 16, 20, 35, and 36 have been amended. Currently, claims 1-9, 11-13, 15-17, and 19-36 are pending in the present application of which claims 1, 12, 16, and 20 are independent. Claims 10, 14, and 18 have been canceled. No new matter has been added.

Claims 1-36 stand rejected on the ground of non-statutory double patenting over claims 1-28 of Mousley (U.S. Patent No. 6,898,417). Claims 1-36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chuah et al. (U.S. Patent No. 6,587,672) in view of Muller (U.S. Patent No. 6,490,461). In view of the amendment set forth above and the following remarks, these rejections are respectfully traversed.

#### DOUBLE PATENTING REJECTION

Claims 1-36 stand rejected on the ground of non-statutory double patenting over claims 1-28 of Mousley. A Terminal Disclaimer is filed in conjunction with this amendment. Therefore, the Examiner is respectfully requested to withdraw this rejection.

#### REJECTION UNDER 35 U.S.C. § 103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

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Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 1-36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chuah et al. in view of Muller. This rejection is respectfully traversed because Chuah et al. and Muller, considered singly or in combination, fail to teach or suggest the claimed invention as set forth in independent claims 1, 12, 16, and 20 and their dependents.

Chuah et al. relates to a method and apparatus for enhanced power ramping via multi-threshold detection. FIGS. 5 and 7 are flow charts of a multi-threshold detection method. The steps of FIG. 5 (502 through 520) are performed in a base station and the steps of FIG. 7 (702 through 720) are performed in a remote terminal. See col. 7, ln. 63-65. First, in step 502, the base station receives a request signal transmitted (step 702) by a remote terminal seeking access to the communications system via the base station. See col. 7, ln. 65-67. Next, in step 504, the base station determines whether the signal exceeds DTHRESH1 (detection threshold level). See col. 8, ln. 2-4. If the original signal transmitted by the remote terminal did not exceed DTHRESH1, the base station (threshold detector) determines whether the signal exceeds PTHRESH1 (step 512). See col. 8, ln. 35-51. If the signal strength of the originally received signal exceeds PTHRESH1, then the base station transmits an "exceeds PTHRESH1" message to the remote terminal (step 514). *Id.* When the remote terminal receives this message (step 712), the remote terminal increases its signal strength by about 1 dB and re-transmits the access request signal (step 714). *Id.* If the original signal transmitted by the remote terminal did not exceed PTHRESH1, the base station (threshold detector) determines whether the signal exceeds PTHRESH2 (step 516). See col. 8, ln. 52-64. If the signal strength of the originally received signal exceeds PTHRESH2, then the base station transmits an "exceeds PTHRESH2" message to the remote terminal (step 518). *Id.* However, if the original signal does not exceed PTHRESH2, then the base station does not transmit any message (step 520). See col. 8, ln. 64-66.

Muller relates to power control based on combined quality estimates. The process of adjusting the mobile station power is illustrated in FIG. 5. See col. 4, ln. 56-67. There, a

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transmission by a mobile station occurs at step 99. Id. At step 100,  $E_b/I_o$  signal-to-interference measurements are taken at the base station usually on the pilot symbols in each slot. Id. This sampling occurs very fast (on the order of 0.625 milliseconds per total measurements), providing a fast power correction measurement. Id. At step 101, a target  $E_b/I_o$  is retrieved. Id. At step 102, the retrieved  $E_b/I_o$  target figure is compared with the  $E_b/I_o$  measurement taken at step 100. Id. At step 103, mobile station power control is adjusted based on the comparison made at step 102. Id.

Claims 1, 12, 16, and 20 relate to transmitting first information units at a first power level "selected to minimize the average power consumption of" the transmitter or transmitting station "as a function of the first power level and power levels of possible retransmissions." The applicants respectfully submit that Chuah et al. does not show this feature. This feature relates to minimizing the average power consumption of the transmitter by selecting the power level of an initial transmission in order to influence the proportion of retransmissions and thereby minimize the average transmission power level. In contrast, the method of Chuah et al. teaches the adjustment of the power level of a transmitter when a transmitted signal does not exceed a predetermined threshold and does not adjust the first power level in order to minimize the average power consumption. The applicants respectfully submit that Muller also does not show this feature. Muller relates to controlling power levels of a transmitter and does not teach retransmission of information units when a first transmission is not correctly received. Because Muller does not teach retransmission of information units, it therefore does not show minimizing average power consumption "as a function of the first power level and power levels of possible retransmissions" (emphasis added). Consequently, it is respectfully submitted that Chuah et al. and Muller fail to teach, singly or in combination, transmitting first information units at a first power level "selected to minimize the average power consumption of" the transmitter or transmitting station "as a function of the first power level and power levels of possible retransmissions."

At least by virtue of Chuah et al. and Muller's failure to teach or suggest the above identified elements of claims 1, 12, 16, and 20, a prima facie case of obviousness has not been

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established under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to withdraw the rejection of claims 1, 12, 16, and 20. Claims 2-9, 11, and 21-24 depend from allowable claim 1, claims 13, 15, and 25-28 depend from allowable claim 12, claims 17, 19, and 29-32 depend from allowable claim 16, and claims 33-36 depend from allowable claim 20. Claims 2-9, 11, 13, 15, 17, 19, 21-32 are therefore allowable at least by virtue of their dependencies. Claims 10, 14, and 18 have been canceled, so the rejections with respect to these claims are moot. The Examiner is therefore respectfully requested to withdraw the rejections of claims 1-36.

#### CONCLUSION


In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

While we believe that the instant amendment places the application in condition for allowance, should the Examiner have any further comments or suggestions, it is respectfully requested that the Examiner telephone the undersigned attorney in order to expeditiously resolve any outstanding issues.

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Respectfully submitted,  
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